



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,508	04/06/2000	Phil Wyatt	MCO-P-00-001	9081
29013 7590 10/30/2008 PATENTS+TMS, P.C. 2849 W. ARMITAGE AVE. CHICAGO, IL 60647				
EXAMINER				
VETTER, DANIEL				
ART UNIT		PAPER NUMBER		
3628				
MAIL DATE		DELIVERY MODE		
10/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2  
3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* PHIL WYATT  
9

10  
11 Appeal 2008-4061  
12 Application 09/544,508  
13 Technology Center 3600  
14

15  
16 Decided: October 30, 2008  
17

18  
19 *Before* WILLIAM F. PATE, III, ANTON W. FETTING and DANIEL S.  
20 SONG, *Administrative Patent Judges*.

21  
22 SONG, *Administrative Patent Judge*.  
23

24 DECISION ON APPEAL

25  
26 STATEMENT OF THE CASE

27 The Appellant appeals under 35 U.S.C. § 134 (2002) from a Final  
28 Rejection of claims 1-10 and 14-19. Claims 11-13 and 20 have been  
29 withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b)  
30 (2002).

1           The Appellant claims a method and a system for providing bed  
2   availability information of healthcare facilities such as nursing homes,  
3   retirement homes and the like. The claimed invention identifies a matching  
4   healthcare facility that provides the type of medical care needed by the  
5   patient and also has a bed available to receive the patient.

6           Independent claims 1 and 14 read as follows:

- 7           1.    A method for providing bed availability information to a  
8           user wherein the user identifies an available bed for a patient  
9           and further wherein the bed availability information includes  
10          information on beds at a plurality of healthcare facilities  
11          wherein the plurality of healthcare facilities receives the patient  
12          based on the bed availability at one of the plurality of  
13          healthcare facilities, the method comprising the steps of:  
14                providing a computer network;  
15                providing a database connected to the computer network;  
16                inputting bed availability information for a plurality of  
17          healthcare facilities wherein each of the plurality of healthcare  
18          facilities have beds for providing a plurality of types of medical  
19          care and further wherein the bed availability information is  
20          input into the database and is accessible by the computer  
21          network;  
22                providing a first access to the database for determining  
23          the available bed for the patient by the user of the database;  
24                inputting a medical condition of the patient into the  
25          database;  
26                searching the bed availability information for the  
27          plurality of healthcare facilities in the database;

1                    matching the medical condition of the patient in the  
2                    database to one of the types of medical care to obtain the bed  
3                    availability information of the plurality of healthcare facilities  
4                    based on each of the plurality of healthcare facilities having  
5                    beds for providing one of the types of medical care to treat the  
6                    medical condition of the patient; and

7                    determining the available bed in the plurality of  
8                    healthcare facilities for the patient with the medical condition  
9                    from the bed availability information based upon the medical  
10                    condition of the patient in the database.

11  
12                    14.    A system for storing and accessing bed availability  
13                    information to a user wherein the bed availability information  
14                    includes information for a plurality of healthcare facilities  
15                    wherein each of the plurality of healthcare facilities has a  
16                    plurality of beds and receives a patient if a bed is available, the  
17                    system comprising:

18                    a computer network;

19                    a database associated with the computer network;

20                    means for inputting bed availability information of a  
21                    plurality of healthcare facilities into the database;

22                    means for accessing the bed availability information and  
23                    retrieving the bed availability information from the database via  
24                    the computer network;

25                    means for inputting information of the patient into a form  
26                    via the computer network wherein the information of the patient  
27                    is stored in the database;

28                    means for searching the database for the bed availability  
29                    information of the plurality of healthcare facilities;

30                    means for comparing the information of the patient in the  
31                    database to the bed availability information in the database to  
32                    obtain each of the plurality of healthcare facilities for treating  
33                    the patient; and

means for determining if a bed in the plurality of beds at each of the plurality of healthcare facilities for treating the patient is available based on the information of the patient in the database.

The prior art relied upon by the Examiner in rejecting the claims is:

Stanis	4,135,241	Jan. 16, 1979
Bruno	US 6,289,088 B1	Sep. 11, 2001
Øhrn	US 6,356,874 B1	Mar. 12, 2002

The Examiner rejected claims 1, 2, 4-9, 14-17 and 19 under 35 U.S.C. § 103(a) as unpatentable over Øhrn and Stanis.

The Examiner also rejected claims 3, 10 and 18 under 35 U.S.C. § 103(a) as unpatentable over Øhrn, Stanis and Bruno.

We AFFIRM-IN-PART.

#### ISSUES

The following issues have been raised in the present appeal.

1. Whether the Appellant has shown that the Examiner erred in rejecting claims 1, 2, 4-9, 14-17 and 19 as unpatentable over Øhrn and Stanis.

2. Whether the Appellant has shown that the Examiner erred in rejecting claims 3, 10 and 18 as unpatentable over Øhrn, Stanis and Bruno.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Øhrn describes a computer-based method and system for reserving a room for a hotel or for admissions to a hospital (col. 1, ll. 6-39; col. 10, ll. 22-30). The system uses a communication network I and includes a central data processing device with a database (fig. 1) into which room availability information for a plurality of facilities is inputted and updated (i.e., means for inputting room availability information) (col. 4, ll. 10-20; col. 5, ll. 47-63; fig. 1). In the system of Øhrn, the user inputs information such as location and date into a user terminal (i.e., means for inputting information of the patient) that can include a display for displaying alphanumeric and graphic information (col. 6, ll. 8-24 and 37-46; col. 7, ll. 3-15; figs. 8-10). Upon receiving the user input information, the central data processing device accesses and searches the database to determine room availability, and matching facilities are presented to the user (i.e., means for searching, means for comparing and means for determining) (col. 5, ll. 37-42; col. 7, ll. 27-37).

2. Øhrn does not specifically describe that the method includes inputting medical condition information of the patient into the database or matching the medical condition to one of the types of medial care in order to determine the availability of beds from the bed availability information.

3. Stanis describes a bed allocation data handling system for a hospital that provides status and nursing station information for the beds of

1 the hospital so that such information can be used to search for beds (col. 3,  
2 ll. 14-25; col. 21, ll. 29-34).

3  
4 PRINCIPLES OF LAW

5 “Section 103 forbids issuance of a patent when ‘the differences  
6 between the subject matter sought to be patented and the prior art are such  
7 that the subject matter as a whole would have been obvious at the time the  
8 invention was made to a person having ordinary skill in the art to which said  
9 subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,  
10 1734 (2007). The question of obviousness is resolved on the basis of  
11 underlying factual determinations including (1) the scope and content of the  
12 prior art, (2) any differences between the claimed subject matter and the  
13 prior art, (3) the level of skill in the art, and (4) where in evidence, so-called  
14 secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18  
15 (1966). In *KSR*, the Court explained that “[o]ften, it will be necessary for a  
16 court to look to interrelated teachings of multiple patents; the effects of  
17 demands known to the design community or present in the marketplace; and  
18 the background knowledge possessed by a person having ordinary skill in  
19 the art, all in order to determine whether there was an apparent reason to  
20 combine the known elements in the fashion claimed by the patent at issue.”  
21 *KSR*, 127 S.Ct. at 1740-41.

22 The Court further explained:

23 When a work is available in one field of endeavor,  
24 design incentives and other market forces can

1 prompt variations of it, either in the same field or a  
2 different one. If a person of ordinary skill can  
3 implement a predictable variation, §103 likely bars  
4 its patentability. For the same reason, if a  
5 technique has been used to improve one device,  
6 and a person of ordinary skill in the art would  
7 recognize that it would improve similar devices in  
8 the same way, using the technique is obvious  
9 unless its actual application is beyond his or her  
10 skill.

11 *Id.* at 1740.

12 The Court noted that “[t]o facilitate review, this analysis should be  
13 made explicit.” *Id.* at 1741, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.  
14 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere  
15 conclusory statements; instead, there must be some articulated reasoning  
16 with some rational underpinning to support the legal conclusion of  
17 obviousness”). However, “the analysis need not seek out precise teachings  
18 directed to the specific subject matter of the challenged claim, for a court  
19 can take account of the inferences and creative steps that a person of  
20 ordinary skill in the art would employ.” *KSR*, 127 S.Ct. at 1741.

21  
22 ANALYSIS

23 Claims 1, 2, 4-9, 14-17 and 19

24 The Examiner rejects independent claims 1 and 14 stating that Øhrn  
25 discloses most of the limitations recited therein, but concedes that Øhrn does  
26 not specifically describe entering the individual medical condition of a  
27 patient or matching the bed to the medical condition of a patient (FF 1 and 2;

1   Ans. 3). However, the Examiner finds that Stanis describes searching for  
2   available beds and information related thereto for the benefit of managing  
3   the status of beds in a hospital (FF 3; Ans. 4). In this regard, the Examiner  
4   articulates that it would have been obvious to one of ordinary skill in the art  
5   to match patient condition to available beds in the invention of Øhrn as  
6   taught by Stanis “for the benefit of accurately placing patients in the correct  
7   ward” of the hospital (Ans. 4).

8  
9                   Claims 1, 2, 4-9

10           Initially, in turning to the Appellant’s arguments, we find the  
11   numerous arguments that the prior art teaches away from the claimed  
12   invention (App. Br. 14, 16 and 17) to be unpersuasive. Mere description of  
13   an implementation in the prior art that differs from the Appellant’s claimed  
14   invention, without more, does not show that the prior art is “teaching away”  
15   from the invention claimed. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed.  
16   Cir. 2004). We also disagree with the Appellant’s contention that Øhrn is  
17   not in the same field of endeavor as Stanis (Reply Br. 6) because Øhrn  
18   clearly discloses the use of the described method and system for admissions  
19   to a hospital, which of course, is a healthcare facility (FF 1). We further find  
20   unpersuasive, the Appellant’s argument that the combination of Stanis and  
21   Øhrn fails to describe a plurality of healthcare providers as recited in claim 1  
22   (Reply Br. 5) because Øhrn clearly describes a system having information  
23   for a plurality of facilities (FF 1).

1           Nonetheless, we do not find that combining Øhrn and Stanis in the  
2     manner suggested by the Examiner results in the method recited in claim 1.  
3     We agree with the Examiner's contention that providing a modern web  
4     interface to the back office system of Stanis would have been obvious (Ans.  
5     6), and we also find that Stanis describes searching and matching of beds  
6     using bed information (FF 3). However, the described searching and  
7     matching of facilities in Øhrn does not relate to the medical condition of the  
8     patient or to the type of medical care as recited in claim 1. This deficiency is  
9     not remedied by the Examiner's application of the teachings of Stanis.  
10    When Øhrn is modified based on the teachings of Stanis in the manner  
11    suggested by the Examiner, the combination results in matching of the  
12    patient's medical condition and corresponding bed assignment within a  
13    particular hospital facility, but the matching and bed assignment does not  
14    extend beyond the particular facility. In other words, in our view, the  
15    combination of Øhrn and Stanis as suggested by the Examiner results in  
16    identifying one or more hospital facilities that have available beds based  
17    upon the input of the user (e.g., location), selecting the desired facility, and  
18    assigning a bed in a ward of the selected hospital based on the medical  
19    condition of the patient. We do not equate this resultant combination as  
20    satisfying the recitations of claim 1 which requires matching the medical  
21    condition of the patient to a type of medical care to obtain bed availability  
22    information of a plurality of facilities.

23           The Examiner's statement that it is well known fact that hospitals  
24    have different wards for providing different types of medical care to patients

(Ans. 6) is duly noted, but the Examiner does not articulate a rational reason as to why one of ordinary skill in the art would be motivated to extend this fact to assign beds in wards of a plurality of different hospitals which have their own different wards that provide various types of medial care. Thus, we find that the combination of Øhrn and Stanis, as applied by the Examiner, does not describe the claimed method. Moreover, we find the Examiner's articulated reason for combining these references, namely, "for the benefit of accurately placing patients in the correct ward" (Ans. 4 and 6), without more, is insufficient to overcome the noted deficiency of the combination. *See KSR*, 127 S.Ct. at 1741. Hence, we do not sustain the Examiner's rejection of independent claim 1. In view of the above, we also do not sustain the Examiner's rejection of claims 2 and 4-9 that depend from independent claim 1, and we need not specifically address the Appellant's arguments directed to these dependent claims (App. Br. 23-29).

Claims 14-17 and 19

With respect to independent claim 14, the Appellant presents substantially similar arguments (App. Br. 17-21) as those presented relative to independent claim 1 discussed *supra*. In this regard, the Appellant contends that neither Øhrn nor Stanis, alone or in combination, describe a means for inputting bed availability information of a plurality of healthcare facilities, a means for searching the database, or a means for inputting information of the patient into a form via the computer network (App. Br. 18). However, the Appellant's argument is not persuasive in that Øhrn

describes these limitations (FF 1; Ans. 4 and 5). The Appellant's argument distinguishing "hotel room vacancy" of Øhrn from hospital bed availability (Reply Br. 6) is unpersuasive because Øhrn clearly describes applicability to hospitals which are healthcare facilities (FF 1). Moreover, the Appellant does not provide any convincing argument that the recited "bed availability information" is distinguishable from room availability information used by the system and method of Øhrn.

The Appellant also argues that claim 14 requires a means for inputting patient's medical data because claim 14 further recites a means for comparing the patient information to appropriate healthcare facilities, and the claimed system would not be capable of determining the appropriate patient treatment facilities without any information regarding the medical condition of the patient (Reply Br. 7). Thus, the Appellant contends that the neither Øhrn nor Stanis, taken singly or in combination, describes the recited system of claim 14 in which information regarding the medical condition of the patient is inputted (App. Br. 18 and 19; Reply Br. 7).

However, the Appellant's argument is not persuasive because it is not based on limitations appearing in the claims. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). As noted by the Examiner, the apparatus claim 14 merely recites "information of the patient" which is broader than the limitation "medical condition of the patient" as now argued by the Appellant (Ans. 4). During prosecution, claims are to be given their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech.*

1     *Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). When the broadest reasonable  
2     construction of the term “information of the patient” is applied, the  
3     geographical information, time of travel and/or price limits inputted by the  
4     user into the system of Øhrn clearly satisfy the recited “information of the  
5     patient” limitation. Øhrn also describes comparing the inputted information  
6     with the information in the database to determine room availability of a  
7     plurality of facilities thereby satisfying the remaining structural limitations  
8     recited in claim 14 (FF 1).

9             The Appellant further contends that the cited prior art references fail  
10     to describe or teach that the bed availability information includes a quantity  
11     of beds available, types of beds available, and projection of expected  
12     availability of beds as specifically recited in dependent claims 15-17,  
13     respectively (App. Br. 34). The Appellant cites *In re Gulack* which states  
14     that the “differences between an invention and the prior art cited against it  
15     cannot be ignored merely because the differences reside in the content of the  
16     printed matter,” and that the claim must be read as a whole. *In re Gulack*,  
17     703 F.2d 1381, 1385 (Fed. Cir. 1983). However, the Appellant fails to  
18     appreciate that *In re Gulack* also states “[w]here the printed matter is not  
19     functionally related to the substrate, the printed matter will not distinguish  
20     the invention from the prior art in terms of patentability. Although the  
21     printed matter must be considered, in that situation it may not be entitled to  
22     patentable weight.” *Id.*

23             While the Appellant asserts that the specific information recited in  
24     claims 15-17 cannot be ignored because “some of the differences between

1 Appellant's system relate to the content of information," and differences  
2 between the invention and the combination of Øhrn and Stanis are  
3 significant (App. Br. 35), no detailed arguments are presented as to how the  
4 specific information recited in these dependent claims relate to the claimed  
5 system or components thereof. The appealed claims 15-17 merely recite that  
6 the bed availability information includes specific information rather than  
7 functionally relate the recited specific types of information to the structural  
8 components of the system claimed. Thus, in our view, claims 15-17 merely  
9 recite non-functional descriptive material which cannot render non-obvious  
10 an invention that would have otherwise been obvious. *See In re Ngai*, 367  
11 F.3d 1336, 1339 (Fed. Cir. 2004).

12 With respect to dependent claim 19, the Appellant's argument that the  
13 cited prior art does not include a means for accessing the database where a  
14 facility enters the bed availability into the database is not persuasive because  
15 Øhrn clearly teaches facilities updating of the database to accurately reflect  
16 current room availability (FF 1).

17 In view of the above, we find that the Appellant has not shown that  
18 the Examiner erred in rejecting the apparatus claims 14-17 and 19 as  
19 unpatentable over Øhrn and Stanis.

20  
21 Claims 3, 10 and 18

22 The Examiner rejected these dependent claims under 35 U.S.C.  
23 § 103(a) as unpatentable over Øhrn, Stanis and Bruno. With respect to  
24 method claims 3 and 10 that depend from independent claim 1, Examiner's

1 application of Bruno does not cure the deficiency of Øhrn and Stanis  
2 discussed *supra*. Therefore, we do not sustain the Examiner's rejection of  
3 claims 3 and 10.

4 With respect to the apparatus claim 18 that depends from independent  
5 claim 1, the Appellant's argument that Bruno fails to describe the recited  
6 remote server (App. Br. 38) is not well taken because a remote server is  
7 described in Bruno (numeral 50; fig. 1A) as well as in Øhrn (fig. 1). In  
8 addition, the Examiner articulates that it would have been obvious to utilize  
9 the Internet as a less expensive alternative to the long distance service  
10 described in the combination of Øhrn and Stanis (Ans. 5 and 6). We find the  
11 Examiner's articulated reason to be rational and conclude that it would have  
12 been obvious to one of ordinary skill in the art to provide a website on the  
13 internet for implementing the combined system of Øhrn and Stanis. *See*  
14 *KSR*, 127 S.Ct. at 1741. In this regard, we further note that updating of a  
15 prior art system using a technique already known in the art (such as website  
16 implementation) is obvious to one of ordinary skill in the art unless its actual  
17 application is beyond his or her skill. *Id.* at 1740; *see also Leapfrog Ent.,*  
18 *Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007). Therefore,  
19 the Appellant has not shown that the Examiner erred in rejecting claim 18.

## 20 21 CONCLUSIONS

22 1. The Examiner erred in rejecting claims 1, 2 and 4-9 as  
23 unpatentable over Øhrn and Stanis.

2. The Appellant has not shown that the Examiner erred in rejecting claims 14-17 and 19 as unpatentable over Øhrn and Stanis.

3. The Examiner erred in rejecting claims 3 and 10 as unpatentable over Øhrn, Stanis and Bruno.

4. The Appellant has not shown that the Examiner erred in rejecting claim 18 as unpatentable over Øhrn, Stanis and Bruno.

#### ORDERS

1. The Examiner's rejections of claims 14-19 are AFFIRMED.

2. The Examiner's rejections of claims 1-10 are REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

#### AFFIRMED-IN-PART

ack

cc:

PATENTS+TMS, P.C.  
2849 W. ARMITAGE AVE.  
CHICAGO, IL 60647